TAN GUAN ENG

v.

B.H. LOW HOLDINGS SDN. BHD. & ORS.

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[CIVIL SUIT NO. 22-228 OF 1989]
7 MARCH 1990

COMPANY LAW: *Appointment of proxies - Validity - Articles of association - Meetings - Adjournment by chairman - Whether valid - Whether power of chairman properly exercised - Continuation of meeting - Whether quorum existed when meeting commenced - Resolution passed at meeting - Whether valid - Companies Act 1965, s. 149(1)(b).*

TGE, TGC and NKH were directors of the company B.H. Low Holdings Sdn. Bhd. (BHL). GSH was the company secretary of BHL. BHL was also a majority shareholder in a company DE, a holding company. The directors of DE were TGE, TGC, NKH and NKC. GSH was also DE's secretary.

An extraordinary general meeting (EGM) was requisitioned by TGE for the removal of old directors and appointment of new directors of BHL's board. TGE appointed two proxies, SHS and TKH, to attend on his behalf. At the EGM on 13 May 1989, the two proxies, NKH, TGC and GSH were present. NKH as chairman of the meeting, adjourned the meeting after which NKH, TGC and GSH left the meeting, leaving behind the proxies who proceeded with the meeting. Three new directors were appointed at this meeting.

On 15 May 1989, NKH and TGS issued a notice seeking for a meeting of the board of directors of BHL on 17 May 1989 to, *inter alia*, appoint a proxy of BHL to attend DE's EGM on 20 May 1989. An injunction was issued against BHL, NKH and TGC restraining them from interfering in the functions and duties of the new directors of BHL. This injunction was served at the meeting of the directors on 17 May 1989 as a result of which the meeting was adjourned. However, the new directors and TGE continued the meeting whereby TGE was appointed BHL's representative to attend DE's EGM on 20 May 1989.

On 20 May 1989 an injunction was obtained to restrain DE from holding the EGM and to restrain TGC from acting as corporate representative of BHL. Another injunction was also issued against BHL, NKH, TGC and GSH. DE's EGM was called off. On 29 May 1989, a new suit was filed requesting that the new directors be restrained from acting or holding themselves out as directors of BHL and from otherwise intermeddling in the business or management of BHL's affairs.

The parties referred the following 3 issues to the Court under O. 33 of the Rules of the High Court 1980.

The issues were:

(a) Whether the appointment of SHS and TKH or either of them as proxies of TGE for the purposes of the EGM of BHL on 13 May 1989 was valid in law.

(b) Whether NKH, the chairman at the EGM of BHL on 13 May 1989, had the power to adjourn or terminate the EGM in the manner in which he did.

(c) If the answer to question 2 is positive, whether the chairman had properly exercised the power.

(d) If the answer to either question 2 or question 3 is negative, whether the EGM could in law be continued in the circumstances.

(e) If the answer to question 4 is in the positive, whether the resolution passed at the EGM on 13 May 1989 that was continued appointing new directors of BHL is a valid resolution.

Held:

[1] It is necessary to put the provisions of the Article 88 of the articles of association beside those of s. 149(1)(b) of the Act and to ask the question whether the latter constitutes an "other provision" as the section contemplated. It seems preferable that Article 88 does not deal with the proper subject matter of s. 149(1)(b) namely the convening of meetings by requisitioning members. That being the subject matter of s. 149(1)(b), it is a subject matter upon which the articles must make "other provisions" if they are to exclude the section's operation. When analyzed in this light, Article 88 can be seen to be addressed to meeting convened by directors.

[2] Section 149(1)(b) of the Act which dictates the qualifications necessary for the appointment of a proxy is not excluded by Article 88 as the article does not provide that a proxy who is not a member need not be one of the 3 categories of persons mentioned in s. 149(1)(b) of the Act; in these circumstances. s. 149(1)(b) is applicable in this case.

[3] The appointment of TKH is invalid as he is neither an advocate, an approved company auditor nor a person specially approved by the Registrar of Companies as stated in s. 149(1)(b); however as THS is a company auditor, his appointment is valid.

[4] TKH did not obtain the consent of the meeting to adjourn the meeting after it was called to order as required by Article 73. Therefore, he did not have the power to adjourn or terminate the EGM in the manner which he did.

[5] Since the adjournment was not valid, the EGM could be continued. The continued EGM with the presence of only the valid proxy of TGS was a meeting as there was a quorum at the commencement of the meeting. The resolution appointing TKB, LEK and LCC as directors was therefore a valid resolution.

[Order accordingly.]

Cases referred to:

East v. Bennett Brothers [1911] 1 Ch 163 ***(cons)***
John v. Rees & Ors. [1969] 2 All ER 274 ***(foll)***
L.C. Neil Enterprises Pty. Ltd. & Anor. v. Toxic Treatments Ltd [1986] 3 ACLC 178 ***(cit)***
National Dwellings Society v. Sykes [1984] 3 Ch 159 ***(foll)***
Re Hartley Baird Ltd. [1954] All ER 695 ***(cit)***
Sharp v. Dawes [1876] 2 QBD 26 ***(cons)***

Legislation referred to:

Companies Act 1965, s. 149(1)(b)
Companies Code (NSW) [Aust], s. 242(1)
Rules of the High Court 1980, O. 33
Stannaries Act 1869 [UK], s. 10

For the plaintiffs - K. Balasundaram; M/s. Balasundaram & Co.
For the respondents - Loh Siew Cheang; M/s. Cheang & Ariff

[**Editor's Note:** The 1st and 2nd defendants in Civil Suit No. 22-228-1989 appealed to the Supreme Court on 9 March 1990 *vide* MARS No. 02-228-90]

JUDGMENT

Wan Adnan J:

By the order of the Court made on 25 October 1989 the above actions were consolidated. Consequent thereto the parties agreed to let the Court decide certain issues under O. 33 of the Rules of the High Court.

The following are the issues:

1. Whether the appointment of Saw Heng Soo and Tan Keng Kooi or either of them as proxies of Tan Guan Eng @ Tan Guan Sooi for the purposes of the EGM of B.H. Low on 13 May 1989 was valid in law.
2. Whether Mr. Ng Kweng Hee, the chairman at the EGM of B.H. Low Sdn. Bhd. (chairman) had the power to adjourn or terminate the EGM in the manner in which he did.
3. If the answer to question 2 is positive, whether the chairman had properly exercised the power.
4. If the answer to either question 2 or question 3 is negative, whether the EGM could in law be continued in the circumstances.
5. If the answer to question 4 is in the positive, whether the resolution passed at the EGM that was continued appointing Teh King Bing, Lim Eng Kim and Lim Chin Chong as directors of B.H. Low Sdn. Bhd. (B.H. Low) is a valid resolution.

For the purpose of determining the issues the following facts were agreed to:

B.H. Low Holdings (B.H. Low) is a company incorporated in Malaysia and has an authorised capital of RM1,000,000 divided into 1,000,000 ordinary shares of RM1 each, out of which 320,000 ordinary shares have been issued and paid up. The registered shareholders of B.H. Low and the number of shares held by them are as follows:

Shareholders	*Shares*
(a) Tan Guan Cheng	12,120
(b) Tan Guan Sooi @ Tan Guan Eng	170,000
(c) Ng Kweng Hee	2,000
(d) Ng Kweng Hee Sdn. Bhd.	100,000
(e) Ng Pee King	23,000
(f) Gooi Seng Hui	11,800
	320,000

The 3 directors of B.H. Low as at 29 October 1988 were Tan Guan Sooi @ Tan Guan Eng, Tan Guan Cheng and Ng Kweng Hee. The secretary of B.H. Low is Gooi Seng Hui.

The main object of B.H. Low is to invest in stocks, shares, debentures, to enter into partnerships, joint ventures etc. and to carry on business as financiers. A copy of the Memorandum and articles of association of B.H. Low is annexed hereto marked as "D-1".

B.H. Low is the majority shareholder in a company known as Dragon Enterprise Sdn. Bhd. (Dragon).

Dragon is a holding company and has a paid up capital of RM594,000 shares of RM1 each. The shareholders of Dragon and the number of shares held by them are as follows:

Shareholders	*Shares*
(a) B.H. Low	305,880
(b) Lam Chuan & Co. (1974) Sdn. Bhd.	118,800
(c) Ong Peng Yeow	48,217
(d) Ong Seng Tee & Sons Sdn. Bhd.	29,700
(e) Ong Seng Sek	29,700
(f) Ong Swee Chan	11,880
(g) Yap Keek Kuan	24,750
(h) Yeap Kim Hoe	24,750
(i) Ng Kwee Hee Sdn. Bhd.	100
(j) Tan Guan Eng @ Tan Guan Sooi	83
(k) Gooi Seng Hui	80
(l) Ng Pee King	60
	594,000

The directors of Dragon are Tan Guan Sooi @ Tan Guan Eng, Tan Guan Cheng, Ng Kweng Hee and Ng Kweng Chew. The secretary of Dragon is Gooi Seng Hui

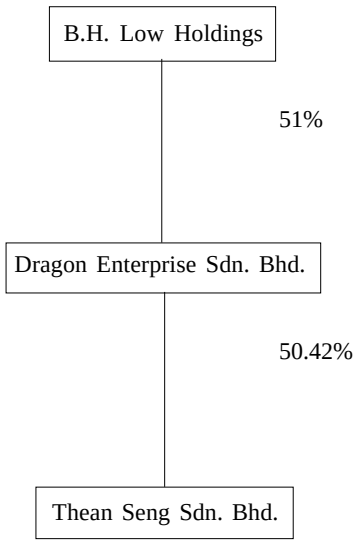
Dragon holds majority shares in a company known as Thean Seng Co. Sdn. Bhd. (Thean Seng). Other than its investment in Thean Seng, Dragon has no other investment.

Thean Seng has an authorised capital of RM2,000,000 out of which RM1,289,000 has been paid up. The shareholders of Thean Seng and the number of shares held by them are as follows:

Shareholders	*Shares*
(a) Dragon Enterprise	6,513
(b) Kim Co. Sdn. Bhd.	4,055
(c) Lim Hean Pin	693
(d) Chow Chee Chor	506
(e) Qui Kin Hai	434
(f) Goh Hoay Choo	278
(g) Goh Seong Kay	150
(h) Chow Ho Hean	105
(i) Moey Heong Goon @ Moey Hoong Yoon	53
(j) Estate of Moey Hoong Kee	52
(k) Swee Yin Lee @ Moey Swee Yin	52
	12,891

The directors of Thean Seng are Ong Hoo Kim, Ong Gim Huat, Ng Kweng Chew, Ng Kweng Hee, Gooi Hoay Chooi, Gui Kin Lian, and Goh Seng Kay. The secretaries of Thean Seng are Lim Chin Kooi and Lim Cheng Por.

The diagram depicted below represents the essential structure of the companies in question:



Board of Directors

Tan Guan Sooi (53% s/h)
Tan Guan Cheng
Ng Kweng Hee
13/5 -- EGM
17/5 -- Directors' Meeting

Board of Directors

Tan Guan Sooi
Tan Guan Cheng
Ng Kweng Hee
Ng Kweng Chew
20/5 -- EGM

Board of Directors

Ong Hoo Kim
Ong Gim Huat
Ng Kweng Chew
Ng Kweng Hee
Gooi Hoay Chooi
Gui Kin Lian
Goh Seng Kay

30/6 -- AGM

An EGM of B.H. Low was held on 13 May 1989. The EGM was requisitioned by Tan Guan Sooi @ Tan Guan Eng. A copy of the requisition is annexed hereto marked as "D-2".

Notice of the EGM was sent out on 5 April 1989 and the resolutions to be passed were as follows:

(a) That Teh King Beng, Lim Eng Kim and Lim Chin Chong be appointed as directors of B.H. Low.

(b) That Ng Kweng Hee and Tan Guan Cheng be removed as directors of B.H. Low.

A copy of the notice is annexed hereto marked as "D-3".

Those present at the EGM were:

2 proxies of Tan Guan Sooi @ Tan Guan Eng namely Saw Heng Soo and Tan Keng Kooi (the proxies).
Ng Kweng Hee
Tan Guan Cheng
Gooi Seng Hui

After the EGM of B.H. Low was called to order, the chairman of the meeting, Ng Kweng Hee, adjourned the meeting. Ng Kweng Hee, Tan Guan Cheng and Gooi Seng Hui then left the meeting.

After the adjournment of the EGM, the proxies remained behind and proceeded with the EGM. At the continuation of the meeting, 3 directors were appointed to the Board of B.H. Low namely Teh King Beng, Lim Eng Kim and Lim Ching Chong (the new directors). A copy of the minutes of the continuing EGM is annexed hereto marked as "D-4".

Ng Kweng Hee and Tan Guan Cheng on 15 May 1989 issued a notice calling for a board meeting of the directors to be held on 17 May 1989 to transact certain businesses, one of which was to appoint a proxy of B.H. Low to attend the EGM of Dragon to be held on 20 May 1989. A copy of the notice is annexed hereto marked as "D-5".

On 17 May 1989, an injunction was issued against B.H. Low, Ng Kweng Hee and Tan Guan Cheng restraining them from interfering with the functions and duties of the new directors as directors of B.H. Low. A copy of the order of Court dated 17 May 1989 is annexed hereto marked as "D-6".

At the board of directors' meeting on 17 May 1989, a copy of D-4 was served on Ng Kweng Hee, Tan Guan Cheng and Gooi Seng Hooi. The chairman of the meeting, Ng Kweng Hee thereupon being served with the order, adjourned the meeting.

After the adjournment of the meeting, the new directors and Tan Guan Sooi @ Tan Guan Eng carried on with the meeting. Tan Guan Sooi @ Tan Guan Eng was elected as chairman of the meeting and was appointed as representative of B.H. Low to attend the EGM of Dragon which was to be held on 20 May 1989. A copy of the minutes of the continued meeting is annexed hereto marked as "D-7".

On 20 May 1989, an injunction was issued against B.H. Low, Ng Kweng Hee, Tan Guan Cheng and Gooi Seng Hooi. A copy of this order is annexed hereto marked as "D-8".

On the same day, that is, 20 May 1989, another injunction was also obtained, *inter alia*, to restrain Dragon from holding the EGM on 20 May 1989 and to restrain Tan Guan Sooi @ Tan Guan Eng from acting as corporate representative of B.H. Low in any general meeting of Dragon. A copy of the order is annexed hereto marked as "D-9".

Following D-9, the EGM of Dragon was called off.

On 29 May 1989, a new suit was filed in Court requesting that the new directors be restrained from acting or holding themselves out as directors of B.H. Low and from otherwise intermeddling in B.H. Low's business or management of its affairs.

Issue No. 1 - Whether the appointment of Saw Heng Soo and Tan Keng Kooi or either of them as proxies of Tan Guan Eng @ Tan Guan Sooi, for the purposes of the EGM of B.H. Low on 13 May 1989 was valid in law.

Tan Guan Eng @ Tan Guan Sooi owns 170,000 shares in B.H. Low. He appointed Saw Heng Soo and Tan Keng Kooi as his proxies for the EGM of B.H. Low to be held on 13 May 1989.

Section 149 (1) of the Companies Act 1965 states as follows:

> 149 (1) A member of a company entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, shall be entitled to appoint another person or persons (whether a member or not) as his proxy to attend and vote instead of the member at the meeting and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting, but **unless the articles otherwise provide** -- (emphasis added)
>
> (a) a proxy shall not be entitled to vote except on a poll;
>
> (b) a member shall not be entitled to appoint a person who is not a member as his proxy unless that person is an advocate, an approved company auditor or a person approved by the Registrar in a particular case;
>
> (c) a member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and

(d) where a member appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

Article 88(1) of the Articles Association of B.H. Low states as follows:

88. (1)(a) A proxy may but need not be a member of the company;

(b) A member shall not be entitled to appoint more than two proxies to attend and vote at the same meeting; and

(c) Where a member appoints two proxies the appointments shall be invalid unless he specifies the proportions of his holdings to be represented by each proxy.

For the purpose of s. 149(a)(b) of the Act both Counsel further agreed to the following facts:

1. That Mr. Saw Heng Soo is a company auditor.
2. That as at date of the EGM Mr. Saw was in full time employment of Chocolate Products Bhd.
3. That Mr. Tan Keng Kooi is not an advocate.

Mr. Loh contends that s. 149(1)(b) of the Act does not apply in view of the provision of Article 88(1) of the Company's Articles of Association.

He says that Article 88(1) makes provisions contrary to the provision in s. 149(1)(b) and therefore the provisions of the section should cease to be applicable. He cited the N.S.W. Court of Appeal case of *L.C. Neil Enterprises Pty. Ltd. & Anor. v. Toxic Treatments Ltd.* [1986] 4 ACLC 178. In that case the provisions of 242 (1) of the Companies Code was:

242 (1). So far as the articles do not make other provision, 2 or more members holding not less than 5% of the issued share capital, or, if the company does not have a share capital, not less than 5% in number of the members of the company may convene a meeting of the company.

Article 56 of the Company's Articles is as follows:

56. The directors may wherever they think fit convene a general meeting and general meetings shall also be convened on such requisition or by such requisitions as provided by s. 241 of the Code. If at any time there are not within the state sufficient directors capable of (*sic*) acting to form a quorum, any director or any one member of the company may convene a general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

The Appeal Court by a majority decision held that Article 56 did make "other provision". Hope JA said:

Having regard to the language of the article and to the context in which it appears - which is part of the articles headed "General Meetings" - Article 56 does in my opinion make other provision for the calling of a meeting of the company on the 'narrower' construction of the section, that is, it makes other provision of the calling of a meeting upon the requisition of the members of the company.

In his dissenting judgment Kirby P said:

accordingly, it is necessary to put the provisions of the article beside those of s. 242 and to ask the question whether the latter constitutes and "other provision"

as the section contemplated.

When viewed in this way it seems preferable to me that Article 56 does not deal with what I take to be the proper subject matter of s. 242, namely the convening of meetings by requisitioning members. That being the subject matter of s. 242 it is a subject matter upon

which the articles must make "other provision" if they are to exclude the section's operation. When analyzed in this light, Article 56 can be seen to be addressed to meeting convened by directors.

I prefer to adopt the approach taken by Kirby P. What then is the subject matter of s. 149(1)(b)? In my view the subject matter is the qualification of a person (not being a member of the company) who can be appointed as a proxy. To exclude the operation of the section the article must make contrary provision in this respect. I find that Article 88(1) does not provide that a proxy who is not a member need not be one of the three categories of persons mentioned in s. 149(1)(b):

In my view s. 149(1)(b) is applicable.

Under s. 149(1)(b) a person who is not a member of the company cannot be appointed a proxy unless he is an advocate, an approved company auditor or a person approved by the Registrar of Companies. Both Mr. Saw Heng Soo and Tan Keng Kooi are not members of the company. As Mr. Tan Keng Kooi is neither an advocate, an approved company auditor nor a person specially approved by the Registrar of Companies, his appointment is not valid. But as Mr. Saw Heng Soo is a company auditor his appointment is valid.

Issue No. 2 - Whether Mr. Ng Kweng Hee, the chairman at the EGM of B.H. Low Sdn. Bhd. (chairman) had the power to adjourn or terminate the EGM in the manner in which he did.

Article 73 of the Articles of Association of the company provide as follows:

> 73. The chairman may, with the consent of any meeting at which a quorum is present and shall, if so directed by the meeting, adjourn any meeting from time to time and from place to place as the meeting shall determine. Whenever a meeting is adjourned for twenty-one days or more, notice of the adjourned meeting shall be given in the same manner as in the case of an original meeting. Save as aforesaid, no member shall be entitled to any notice of an adjournment or of the business to be transacted at an adjourned meeting. No business shall be transacted at any adjourned meeting other than the business which might have been transacted at the meeting from which the adjournment took place.

According to para. 14 of the agreed facts the chairman of the meeting Mr. Ng Kweng Hee adjourned the meeting after the EGM was called to order. He did not get the consent of the meeting to do so. Under Article 73 the chairman can only adjourn a meeting with the consent of the meeting.

In *National Dwellings Society v. Sykes* [1984] 3 Ch 159, Chitty J in his judgment said:

> A question of some importance has been mooted in this case, with regard to the powers of the chairman over a meeting. Unquestionably it is the duty of the chairman, and his function, to preserve order, and to take care that the proceedings are conducted in a proper manner, and that the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting. But, in my opinion, the power which has been contended for is not within the scope of the authority of the chairman - namely, to stop the meeting at his own will and pleasure. The meeting is called for the particular purposes of the company. According to the constitution of the company, a certain officer has to preside. He presides with the reference to the business which is to be transacted. In my opinion, he cannot say, after that business has been opened, "I will have no more to do with it; I will not let this meeting proceed. I will stop it; I declare the meeting dissolved, and I leave the chair". In my opinion, that is not within his power. The meeting by itself (and these articles certainly apply to what I have said) can resolve to go on with the business for which it has been convened, and to appoint a chairman to conduct the business which the other chairman, forgetful of his duty or violating his duty has tried to stop because the proceedings have taken a turn which he himself does not like.

I agree with the said judgment. My answer to this issue is therefore in the negative.

Issue No. 3 - If the answer to question 2 is positive, whether the chairman had properly exercised the power.

This question does not arise in view of negative answer to the Issue No. 2.

Issue No. 4 - If the answer to either question 2 or question 3 is negative, whether the EGM could in law be continued in the circumstances.

Since the adjournment was not valid the EGM could be continued.

> On the footing that there was no valid adjournment, it follows that ... the meeting remained in being and competent to transact business. The elections conducted after the departure of the plaintiff were accordingly valid.

per Megarry J in *John v. Rees & Ors*. [1969] 2 All ER 274.

Issue No. 5 - If the answer to question 4 is in the positive, whether the resolution passed at the EGM that was continued appointing Teh King Beng, Lim Eng Kim and Lim Ching Chong as directors of B.H. Low Sdn. Bhd. (B.H. Low) is a valid resolution.

Under Article 70 two members must be present to form a general meeting. But Article 69 provides:

> No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

The quorum is required only at the time when the meeting proceeds to business. (*Re Hartley Baird Ltd*. [1954] All ER 695). There was a quorum present when the meeting proceeded to business. After the departure of Mr. Ng Kweng Hee, Mr. Tan Guan Cheng and Mr. Gooi Seng Hooi only Mr. Saw the valid proxy remained.

In *Sharp v. Dawes* [1876] 2 QBD 26, Lord Coleridge CJ said:

> This is an attempt to enforce against the defendant a call purporting to have been made under s. 10 of the Stannaries Act 1869. Of course it cannot be enforced unless it was duly made within the Act. Now, the Act says that a call may be made at a meeting of a company with special notice, and we must ascertain what within the meaning of the Act is a meeting and whether one person alone can constitute such a meeting. It is said that the requirements of the Act are satisfied by a single shareholder going to the place appointed and professing to pass resolution. The 6th and 7th sections of the Act show conclusively that there must be more than one person present; and the word "meeting" *prima facie* means a coming together of more than one person. It is of course, possible to show that the word "meeting" has a meaning different from the ordinary meaning, but there is nothing here to show this to be the case...

Warrington J in *East v. Bennett Brothers* [1911] 1 Ch 163 said:

> But now I have to consider whether this is not one of the cases referred to by Lord Coleridge CJ as one in which it may be possible to show that the word "meeting" has a meaning different from the ordinary meaning.

In that case Bennett was the holder of all the original preference shares. It was provided in the memorandum of association that no new shares should be issued unless such issue was sanctioned by an extraordinary resolution of the holders of the preference shares present at a separate meeting of such holders. Bennett presided the meeting and moved the resolution. Warrington J held:

> I think on the whole that I may give effect to obvious common sense by holding that in this particular case, where there is only one shareholder of the class, on the true construction of the memorandum, the expression "meeting" may be held to include that case.

In the present case Mr. Saw was the proxy of Tan Guan Sooi @ Tan Guan Eng who was the holder of 170,000 shares out of the issued share capital of 320,000. He was the majority shareholder. The EGM was requisitioned by him. Notice of the EGM was sent out and the resolutions to be passed were:

(a) That Teh King Beng, Lim Eng Kim and Lim Ching Chong be appointed as directors.

(b) That Ng Kweng Hee and Tan Guan Cheng be removed as directors.

Ng Kweng Hee, Tan Guan Cheng and another shareholder Gooi Seng Hooi attended the meeting. Ng Kweng Hee was in the chair. After calling the meeting to order Ng Kweng Hee adjourned the meeting and together with Tan Guan Cheng and Gooi Seng Hooi left the meeting, leaving only the proxy of the majority shareholder Tan Guan Sooi @ Tan Guan Eng.

As with Warrington J I have to consider whether this is not one of the cases referred to by Lord Coleridge CJ as one in which it may be possible to show that the word "meeting" has a meaning different from the ordinary meaning.

In my view in the circumstances of the case the continued EGM with the presence of only the valid proxy of Tan Guan Sooi @ Tan Guan Eng was a meeting. There was a quorum at the commencement of the meeting. Ng Kweng Hee must have sensed that the proceeding had taken a turn which he did not like and that the proposed resolutions were going to be passed when he, in violation of his duty as chairman, adjourned the meeting. The reason is too obvious. Mr. Saw was the proxy of the majority shareholder.

My answer to this issue is therefore in the affirmative. The resolution appointing Teh King Beng, Lim Eng Kim and Lim Ching Chong as directors is a valid resolution.

Consequently the following orders were made.

Civil Suit No. 22-228-1989

1. There is a declaration that the termination of the EGM of the 1st defendant on 13 May 1989 by the 2nd defendant was unlawful.
2. A declaration that the continuation of the EGM by the plaintiff's proxy was lawful and that the appointment of Teh King Beng, Lim Eng Kim and Lim Ching Chong as directors is valid.
3. The injunction as prayed in prayer (iii).
4. Costs to be paid by the defendant.

Civil Suit No. 22-245-1989
The action is dismissed with costs.

Civil Suit No. 22-231-1989
The injunction granted on 14 June 1989 is set aside with costs.

Originating Summons No. 24-363-1989
The *ex parte* order dated 18 May 1989 is set aside with costs.

The O.S. is dismissed with costs.

Also found at [1991] 3 CLJ 1873